

## Denmark

Neil Smith  
*Equinor, Copenhagen*

### Key facts

#### **Main tax rates**

- Corporate tax rate: 25 percent
- VAT standard rate: 25 percent
- Personal income tax top rate: 59 percent

### **Population/GDP**

Population: 5.5 million  
GDP: US\$193b (2007)

### **Currency**

Danish Krone, abbreviated here to DKK (Denmark is not part of the Eurozone but the Krone is tightly pegged against the Euro at a rate of around DKK 7.45 to EUR1).

### **Membership of economic groups**

Member of EU, OECD

### **Major industries**

Services, agriculture, furniture, shipping and electronics

### **Website of tax/finance authority**

[www.skat.dk](http://www.skat.dk) – Tax Authority  
[www.oem.dk](http://www.oem.dk) – Ministry for Business  
[www.eogs.dk](http://www.eogs.dk) – Commerce and Companies Agency

## Introduction

Denmark's traditional social and political values are along similar lines to its Scandinavian neighbours. The region is renowned for its welfare state and in Denmark this can mean generous unemployment payments as well as free hospital care and university education. This, however, must be funded through taxation, resulting in Denmark having, by international standards, a high overall burden of taxation. This fact, combined with a general belief that a low level of inequality is an appealing aim, has meant that taxes on top earners are amongst the highest in the world.

Denmark has also traditionally had a strong environmental feeling and some of the taxes, in particular the heavy tax on purchases of cars, should be seen in this light. Further, the country has in recent years run a significant budget surplus with the aim of bringing the national debt down to a low level, although this is unlikely to continue in the current economic circumstances.

Corporate and indirect taxes are the same nationwide. Personal income tax is generally deducted from monthly wages by the employers and paid to the central tax authorities. Some though is allocated thereafter to the central government and some to the local authority the taxpayer resides in, and tax rates can therefore vary slightly according to the local authority in question.

## Recent developments

After being re-elected in November 2007, the Government appointed a Tax Commission to report on the modernizing of the tax system following concerns that Denmark's high rates of direct personal taxation could prove to be a hindrance to the economy in an increasingly globalised market and a general wish to increase the labour supply given that most of the "Baby Boom" generation will be retiring in the next decade. The Commission was headed by a former Tax Minister and also consisted of experts in the field of economics, law and finance.

The Commission reported its findings in February 2009 and a month later the Government entered into an agreement with its regular support party, the Danish People's Party, for a formal bill being presented to the Danish Parliament. Certain formalities remain to be completed before the bill comes into force, which is expected to be in late May or early June 2009, although, given that a majority has already agreed on the key contents, significant changes are highly unlikely.

The bill provides for significant changes in the Danish tax system in the coming years with marginal personal tax rates to be brought down but with a reduction of certain allowances and an increase of green taxes. The proposals are roughly revenue neutral in the long term but, as a response to the global downturn, provide for a significant impetus in the initial years. Throughout the course of this article, I have detailed the law as it stands at May 2009 but I have detailed a brief summary of the proposals below.

Since coming into power in November 2001, the current centre-right government has implemented a tax freeze which means that taxes or tax rates should not generally

be increased and, should they be, other taxes should be reduced to compensate. The tax freeze does not prevent measures to close perceived loopholes, and particularly corporate tax (to be discussed in more detail below) has seen significant changes in recent years as the tax ministry have sought to curb perceived aggressive tax planning with new rules.

As a full member of the EU, Denmark is bound to provide for the basic freedoms espoused in the Treaty of Rome, and there have been instances in recent years (in relation to pensions and CFC rules) where it has adjusted its tax policies in response to a judgement from the European Court of Justice.

### ***Changes currently proposed***

As mentioned above, a bill featuring significant changes to the Danish system is currently being debated before the Danish Parliament and expected to be passed, in the main as proposed, in the near future. The bill provides for some major reductions in the marginal rate of personal taxation:

- The 6% middle tax bracket will be abolished effective from 1 January 2010.
- The basic rate of tax will be reduced by 1.5% from 1 January 2010 - this particular move will benefit almost all people in employment.
- The top rate of taxation will remain the same but, as the system is cumulative, top rate taxpayers will have their marginal rate reduced due to the increased in the basic and middle rates. In addition, the threshold after which the top rate will be paid will be increased by DKK 36,000 in 2010 and a further DKK 18,400 in 2011. Taken with the measures detailed above, this amounts to significant tax reductions for top rate taxpayers, and the maximum rate of taxation the changes will be around 51.5% (as opposed to 59% at the moment) as well as reducing the number of people actually paying the top rate of tax.
- The employment allowance will increase from 4.25% (from a maximum of DKK 13,500) to 7% (up to a maximum of DKK 22,500).

Traditionally, Danish individuals have been able to deduct some of the interest on debt. The percentage deduction permitted will be reduced from 33% to 25% but this will be phased in between 2012 and 2019 (with the relief decreasing by 1% each year). Further, the reduction will only apply on interest in excess of DKK 50,000 for individuals and DKK 100,000 for married couples. As well as this, if a taxpayer should be disadvantaged by the new package as a whole there will be scope for special compensation to make up the difference. The complicated calculation system reflects the fact that this particular proposal was politically contentious thus concessions needed to be made following the original proposals.

It is also proposed that the participation exemption will change for companies. Both dividends and capital gains for shareholdings of 10% or more will be exempt regardless of the holding period, assuming that a tax treaty or the Parent Subsidiary Directive is applicable. Shareholdings of less than 10% will be taxed according to the mark to market principle at the end of the tax year and income in this instance shall not

be exempt. These proposals represent a significant widening and therefore improvement of the participation for substantial shareholdings but a reduction in the desirability (from a taxpayer's perspective) of the rules for small shareholdings given that tax could be due without the liquidity to pay.

This list is not intended to be exhaustive but rather detail the most prominent aspects of the proposed legislation. For interested readers further literature is available.<sup>1</sup>

## **Corporate taxes**

### ***General outline***

In recent decades, Denmark has had fairly low rates of corporate taxation – compared to other countries in western Europe and the high rates of personal taxation and indirect taxes in Denmark – as the government has sought to pursue generally business-friendly policies.

As mentioned above, though, there have been significant changes in corporate taxation in recent years. Since 2005, domestic joint taxation has been compulsory (see further details below) and in 2007 a comprehensive package was introduced which, amongst other things, limited interest deductions in particular instances.

### ***Corporate tax rates***

The tax rate has been 25 percent since 2007 (the previous rate was 28 percent). It is a flat rate and all companies/income which do not fall under a specific regime are taxed accordingly. Consistently profitable companies are obliged to pay tax on account in March and November according to their results in previous years.

As a general rule, expenses incurred with the aim of securing and maintain the income of the company are deductible for tax purposes. There are specific tax rules in relation to interest expenses (to be discussed in more detail later).

Assets which cost less than DKK 11,900 (2008) or have an estimated life of three years or less can be written off immediately. Machinery, furniture and fittings are depreciated using the reducing balance method. The maximum permitted depreciation is being tapered down from 25 percent of value (in 2007) to 15 percent in 2016 by a reduction of 2 percent every two years, so, for example in 2008 and 2009 the maximum depreciation permitted will be 23 percent, in 2010 and 2011 it will be 21 percent, and so on.

Manufacturing buildings can be depreciated by a maximum of 4 percent using the straight-line method; residential buildings cannot be depreciated. The cost of intellectual property can be depreciated over seven years using the straight-line method.

A tonnage tax operates for Danish shipping companies or Danish permanent

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<sup>1</sup> N Smith, New Tax Proposal in Denmark, BNA International, European Tax Service, March 2009

establishments of other EU shipping companies. This involves the deeming of income according to the total tonnage operated by the company in question and the number of days ships are operated, and deductions are limited.

#### *Hydro carbon-related taxes*

There are two special hydrocarbon-related taxes applicable. The first applies mainly to non-residents engaged in exploration, whereas the second one relates to resident companies (or those with a Danish PE) extracting hydrocarbons.

In the first scenario, foreign enterprises are subject to tax in Denmark where the enterprise earns incomes in connection with preliminary surveys, exploration and extraction of hydrocarbons in Denmark even if the entity would normally not be considered resident in Denmark. The costs of preliminary survey and exploration may be deducted, and the acquisition cost of machinery, equipment, ships and buildings used in this connection can be depreciated in line with the normal rules. The rate of tax payable is 30 percent and self-employed individuals in this field are subject to the same tax. The amount and the precise rules in question may be adjusted according to the tax treaty in force with the country of residence of the company/individual in question.

The second tax is only applicable to companies who extract hydrocarbons. These entities are still liable to corporation tax, but after this they are also liable to a hydrocarbon tax (the corporation tax is deductible). The rate of tax is generally 70 percent but is 52 percent in respect of activities carried out without state participation (in connection with the 1962 sole concession) and in respect of new licences issued after January 1, 2004.

#### **Capital gains taxes**

There is no specific concept of capital gains tax and, as a general rule, capital gains or losses are included in the taxable income of the company. The main exception to this is capital gains on the sale of shares, which are exempt if they meet certain criteria, the main one being that the shares are held for three years. This does not apply where the seller is deemed to be consistently dealing in shares.

#### **Position of losses**

Losses can be carried forward indefinitely. There is no provision for carry-back losses. There are specific rules which may restrict carry-forward losses upon change of ownership or conversion of debt to equity.

Where the joint taxation rules are applicable (see also below) companies should use their own losses first and, only once these are fully used, losses of other group companies.

#### **Group treatment**

A company is deemed to be part of a group where it is controlled by the parent company. This will generally be by voting rights, but can also be through having the right

to appoint a majority of directors or a contractual agreement which means that the parent company effectively has control of operations.

Joint taxation is mandatory for all Danish group companies (together with any PEs or immoveable property in Denmark) resulting in the group having to submit a global tax return. Where one company uses another group company's losses, the profitable company should pay the value of the losses used (effectively the tax it would otherwise have paid) to the loss-making company.

International joint taxation is optional but is only available on an "all or nothing" basis, i.e. it is not possible to include one foreign subsidiary but not another, and it is binding for a 10-year period. The stringent criteria mean that very few groups have chosen this.

Denmark has a relatively wide participation exemption for dividends received from a domestic or foreign subsidiary. The criteria provides that the Danish company should hold at least 10 percent of the total share capital for at least 12 months, the subsidiary is a company and (for a foreign subsidiary) the subsidiary is resident in the EU or a country with a tax treaty with Denmark.

### **Withholding taxes**

Table 1 shows the various withholding rates.

#### ***Position of resident companies***

Companies which are incorporated in Denmark or have their central management and control in Denmark are deemed to be resident and therefore fully liable to tax in Denmark.

Denmark employs a limited territoriality principle whereby income from immovable property or a permanent establishment outside of Denmark is exempt from tax. Other income sourced outside Denmark is taxable in the normal manner.

#### ***Position of non-resident companies***

Non-resident companies are generally only taxable in Denmark if the income is attributable to immovable property or a permanent establishment in Denmark.

#### ***Dividends, interest and royalties***

##### *Dividends*

There is a relatively wide exemption from withholding tax on dividends where the shareholder owns more than 10 percent for a 12-month period and the withholding rate is reduced by a tax treaty or the EU Parent–Subsidiary Directive. Where this is not applicable, the tax treaty rate will be applied. Where no tax treaty exists, the withholding rate will be 15 percent if the shareholder holds less than 10 percent, and there is

provision for exchange of information between Denmark and the country of residence of the recipient. Otherwise, the withholding rate is 28 percent.

#### *Interest*

There is no general interest withholding tax but there is provision for withholding at 25 percent where interest is paid to a related foreign entity and the foreign entity is taxed substantially lower than in Denmark and its activities are mainly of a financial nature. This does not apply where a tax treaty (regardless of the rate) or the Interest and Royalties Directive is applicable.

#### *Royalties*

A final withholding tax of 25 percent is applied to most payments relating to intellectual property, but not copyright. The rate may be reduced by a tax treaty or eliminated by the Interest and Royalties Directive.

### **Indirect taxes**

#### ***VAT/GST: main and reduced rates, exemptions***

The standard rate of VAT is 25 percent, which applies to almost all entities above a *de minimis* level of DKK 50,000 per annum (approx. EUR6,700). VAT is reported monthly, quarterly or half-yearly according to the turnover of the company. Groups will normally report VAT together.

There are few exceptions to the main rate although a zero rate does apply to newspapers, and certain aircraft and ships are exempt (the rules in this area are set to change from January 1, 2010).

#### ***Other indirect taxes***

Denmark applies excise duties on (amongst other things) petrol, alcohol and cigarettes. Of particular note is the environmental tax on cars, which vastly increases the cost of Danish-registered cars. The precise amount of the tax depends on the exact nature of the car and its engine, but a tax of 180 percent of the value of the car is normal.

### **Personal taxes**

#### ***Domicile and residency requirements***

An individual is deemed a resident of Denmark (and thus fully taxable) if

1. they stay in Denmark for more than three consecutive months; or
2. they stay in Denmark for 180 days or more in a 12-month period; or
3. work is performed during their stay in Denmark.

The third rule means that workers located in Denmark will generally be fully taxable in Denmark regardless of how short their stay may be.

### **Main rates and bands (Table 2)**

The tax paid is built up as a combination of municipal tax and central government tax; both are collected at the same time and an aggregate amount is deducted from the employee's wages. The municipal rate differs slightly according to the council of residence. Detailed below is the rate combined between the national rate and the average municipal rate, although an employee's actual effective rate may vary up to plus or minus approximately 1 percent according to the council of residence. The figures shown are applied to the net amount after the social security contribution detailed below.

Traditionally, there have been three bands of tax for general income (top, middle and basic), all thresholds detailed are 2009 rates. The basic rate is 38 percent and applies up to DKK 347,200. In previous years there has been a distinct band of middle tax where an additional 6% is charged (i.e. a marginal rate of 44%) but the threshold for middle band has been getting closer and closer to that of the top band and, from 2009, the thresholds were identical. This means that in 2009 an employee would go straight from paying a marginal rate of 38% to a marginal rate of 59% (38% basic rate plus 6% middle rate as well as 15% top rate) at the threshold of DKK 347,200.

Included in personal income are all remuneration received from an employer (including the likes of accommodation, use of car, etc.) as well as any pension receipts or unemployment benefits. Benefits in kind are generally taxed at market value, although there are specific rules for company cars, for example.

The standard allowance for an individual is DKK 42,000 per annum. Travelling allowances are provided where an individual travels more than 24 kilometres per day and an employment allowance of up to DKK 13,600 is provided in certain circumstances. Trade union membership fees and unemployment insurance premia are deductible.

There is a specific expatriate provision which provides that those who are either involved in research or earning more than DKK 63,800 (approximately EUR8,300) per month (after deduction of the 8 percent social security provision) can opt to pay a flat rate of 25 percent. No deductions are available in this instance, and the scheme can be chosen for up to three years. Alternatively, an individual meeting the criteria can elect to pay a flat rate of 33 percent (again after social security deductions) for a period of five years.

### *Dividends*

Dividends and gains and losses on the disposal of shares are taxed together in a different category. The tax rate on this income is 28 percent on amounts up to DKK 46,700; 43 percent on amounts between DKK 48,300 and DKK 106,100 and 45 percent on the surplus (all figures 2008).

***Social security/national insurance payments***

A flat-rate national insurance contribution (or Labour Market Contribution as it is known in Danish) of 8 percent is payable by all employees. This amount is deducted before income tax is due (please see above) and the amount income tax is due on is the gross salary less the social security contributions.

Traditionally, there has been a compulsory pension savings payment of 1 percent of salary. This has been suspended from 2004 to 2009 but it is expected to be reactivated thereafter.

**Transfer pricing and anti-avoidance rules*****Transfer pricing rules (documentation requirements, APAs, etc.)***

Transactions between related parties (generally meaning common ownership of over 50 percent and applying to resident and non-resident companies alike) should be conducted on an arm's length basis. For documentation purposes, the transfer pricing methods stated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are generally applicable.

There is no specific procedure for obtaining advance approval for transfer pricing matters, but these fall under the general rules whereby a taxpayer can apply to the tax authorities for a binding ruling as to how a particular transaction would be treated.

***Anti-avoidance provisions***

There are no general anti-avoidance rules in Denmark. A small number of cases have suggested a case law lead "substance over form" principle where a particular transaction or stage can be reclassified or set aside where it seems to have no obvious economic benefit to one or all of the parties, and the tax authorities have suggested of late that conduit companies could be regarded as transparent in certain circumstances, but there is little clear legislation to back up either approach, and no clear doctrine has emerged in either case.

***Thin capitalisation/other interest deductibility rules***

These apply where controlled debt (generally regarded as common direct or indirect control over voting rights or shares) is over DKK 10 million (approx. EUR1.35 million). The permitted debt:equity ratio at tax year end is 4:1 and interest expenses above that threshold are not allowed.

From July 2007, additional detailed interest deductibility rules were brought in, which apply over and above the thin capitalisation rules. These apply to both related and third-party debt but net financial expenses below DKK 21.3 million (approx. EUR2.9 million) per annum are still allowed, meaning that normally only large groups would be affected. The first rule limits the deductible interest expenses to a standard rate (6.5 percent in 2009) on the tax value of the company's business assets.

The second rule limits the net financing expenses to 80 percent of the annual taxable profits.

### ***Controlled Foreign Company (CFC) rules***

For companies the Danish CFC rules apply where all the following conditions are met:

- A majority of the voting rights in the subsidiary are held directly or indirectly.
- Over 50 percent of the income of the subsidiary is of a financial nature – this includes, in particular, interest, dividends, royalties and capital gains on shares.
- More than 10 percent of the subsidiaries' assets is of a financial nature.

For an individual owner, CFC rules apply if the subsidiary is controlled by the individual and both low-taxed (at a rate of less than 18.75 percent) and financial (income from financial sources of more than 50 percent), although there is a derogation in the rules if the subsidiary is a company within the EU conducting genuine economic activity.

Where applicable, the CFC rules mean that the income of the subsidiary should be brought into the tax calculation of the Danish resident regardless of whether any funds have been formally distributed. A credit is given for the tax paid in the subsidiary.

### **Tax treaties**

Denmark has more than 80 double tax treaties, including treaties with most OECD countries and major emerging nations. Two noticeable absences from the list are Spain and France, as the Danish government unilaterally rescinded its treaties with the two countries, with effect from January 1, 2009 owing to a long-standing dispute concerning the right to tax Danish pensioners who have moved to the Mediterranean following retirement. At the time of writing it is not clear when revised treaties will be renegotiated.

Denmark's main general trading partners include Germany, Sweden, the United Kingdom, France, the Netherlands and the United States of America.

### **Miscellaneous taxes**

#### ***Taxes on payroll***

There is no general payroll tax in Denmark, although there is provision that companies working in certain fields (generally exempt from VAT) are liable to a form of payroll tax.

#### ***Taxes on capital***

There is no capital tax in Denmark, neither is there stamp duty on the transfer of shares or loans, although there is a tax on the change of ownership of real estate and mortgages. Further, there is no general wealth tax.

**Taxes on property**

Owner-occupied dwellings are taxed on the basis of their value (this includes both the buildings themselves and the surrounding land). Generally, the public assessment on January 1, 2002 is used as the base and a yearly charge is made of 1 percent of the value of the property up to DKK 3,040,000 and 3 percent on the excess.

**Other taxes**

There is an optional church tax which is paid by many Danes and gives certain rights of access to churches (for example, to be married in a church). The exact amount depends on an individual's municipality of residence but it is normally around 1 percent.

**Table 1 Tax treaty withholding rates**

Country	Dividends		Interest (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>a</sup> (%)		
Argentina	15	10	12	3/5/10/15
Armenia	15	15	0	0
Australia	15	15	10	10
Austria	15	0	0	0
Bangladesh	15	10	10	10
Belarus	15	15	0	0
Belgium	15	0	10	0
Brazil	25	25	0/15	15/25
Bulgaria	15	5	0	0
Canada	15	5	0/15	0/10
Chile	15	5	5/15	5/10
China	10	10	10	7/10
Croatia	15	5	0	10
Cyprus	15	10	0/10	0
Czech Republic	15	15	0	5
Egypt	20	15	15	20
Estonia	15	5	10	5/10
Faroe Island	15	0	0	0
Finland	15	0	0	0
Georgia	15	15	0	0
Germany	15	0/5	0	0
Greece	18	18	8	5
Greenland	— <sup>b</sup>	— <sup>b</sup>	0	10
Hungary	15	5	0	0

Country	Dividends		Interest (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>a</sup> (%)		
Iceland	15	0	0	0
India	25	15	10/15	20
Indonesia	20	10	10	15
Ireland	15	0	0	0
Israel	15	5	25	10
Italy	15	0	0/10	0/5
Jamaica	15	10	12.5	10
Japan	15	10	10	10
Kenya	30	20	20	20
Korea Republic	15	15	15	10/15
Kyrgyzstan	15	15	0	0
Latvia	15	5	10	5/10
Lithuania	15	5	10	5/10
Luxembourg	15	5	0	0
Macedonia	15	0/5	0	10
Malaysia	0	0	0/— <sup>c</sup>	0/25
Malta	15	0	0	0
Mexico	15	0	0/5/15	10
Montenegro	15	5	0	10
Morocco	25	10	10	10
Netherlands	15	0	0	0
New Zealand	15	15	10	10
Norway	15	0	0	0
Pakistan	15	15	15	12
Philippines	15	10	10	15
Poland	15	0/5	0/5	5
Portugal	10	0	0/10	10
Romania	15	10	10	10
Russia	10	10	0	0
Serbia	15	5	0	10
Singapore	10	0/5	10	10
Slovakia	15	15	0	5
Slovenia	15	5	5	5
South Africa	15	5	0	0
Sri Lanka	15	15	0/10	10
Sweden	15	0	0	0
Switzerland	0	0	0	0
Taiwan	10	10	10	10

Country	Dividends		Interest (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>a</sup> (%)		
Tanzania	15	15	12.5	20
Thailand	10	10	10/15	5/15
Trinidad and Tobago	20	10	15	15
Tunisia	15	15	12	15
Turkey	20	15	15	10
Uganda	15	10	10	10
Ukraine	15	5	10	0/10
UK	15	0	0	0
USA	15	0/5	0	0
Venezuela	15	5	0/5	10
Vietnam	15	5/10	10	5/15
Zambia	15	15	10	15

- a The reduced treaty rates will often apply if the non-resident company owns at least 25% of the capital (or sometimes the voting rights) in the Danish company; no holding period is required.
- b The domestic rate applies; there is no reduction under the treaty.
- c The zero rate applies if the loan in respect of which the interest is paid is approved by the government of Denmark. The domestic rate applies in other cases; there is no reduction under the treaty.

**Table 2 Main personal tax rates (2008 rates)<sup>a</sup>**

<b>Employment income</b>	
Income <sup>b</sup>	Rate <sup>c</sup>
DKK 347,200	38%
Upwards	59%
<b>Dividends/capital gains</b>	
Income	Rate
DKK 48,300	28%
DKK 106,100	43%
Upwards	45%

- a The rates shown are the marginal rates. For amounts above a particular threshold the lower rate applies up to the initial threshold, e.g. employment income of DKK 400,000 per annum, the rate is 38% up to DKK 347,200 and 59% is applied to the balance of DKK 52,800.
- b Income is calculated as the amount above the personal allowance. The standard personal allowance is DKK 41,000, although this may be higher where there are commuting allowances, interest relief or similar.
- c The rate shown is the average total rate including both national and local taxes. The precise rate may vary slightly (generally  $\pm 1\%$ ) from council to council. The rate does not include national insurance payments.